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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 283.

THE UNITED STATES, APPELLANT,

vs.

LEWIS E. BROWN.

No. 284.

LEWIS E. BROWN, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

FILED MAY 3, 1906.

(20240 AND 20241.)

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1 In the Court of Claims.

LEWIS E. BROWN
vs.
UNITED STATES. } No. 23129.

I. *Petition—Filed December 17, 1902.*

The petition of Lewis E. Brown shows as follows:

1. Heretofore, to wit, on the 7th day of July, 1898, the petitioner, by the name of Louis E. Brown, was by the President of the United States, by and with the advice and consent of the Senate, duly appointed and commissioned first lieutenant, 9th Regiment Volunteer Infantry, in the military service of the United States, and then entered upon and thereafter continued to discharge the duties of his office under said commission within the United States and in the island of Cuba until February 15th, 1899, after which date the further performance by him of his said duties has been prevented by his superior officers.

He then returned from Cuba, where he had been with his command ever since, on or about the 1st day of August, 1898, to the United States, and ever since his said return, with the aid of counsel employed by him, and exerting all the means in his power, he has been constantly engaged in the effort to secure his restoration to duty under his said commission and, failing in that, to secure an honorable discharge from the military service aforesaid. He first applied by letter, dated March 30th, 1899, to the Secretary of War to be restored to duty, which application failed.

Thereupon he applied by letter, dated May 7, 1900, to the Secre-
2 tary of War for an honorable discharge from the service aforesaid, but this effort also failed. He thereupon instituted mandamus proceedings in the supreme court of the District of Columbia to secure such discharge, but he also failed in that effort. He has been at all times since February 15th, 1899, ready, willing, and able to perform the duties of his rank under said commission, of which fact the Secretary of War has ever been well aware.

The Auditor allowed his said application for pay to and including February 17th, 1899, but disallowed his application as to extra pay during the period of the petitioner's service in Cuba for traveling allowances and for pay after February 17th, 1899.

2. The action of the War Department and Auditor in the premises is based upon a certain paper writing on file in the War Department, purporting to be the record of proceedings of a court-martial. The matters appearing in said paper writing are substantially as follows: That on November 3d, 1898, by command of Gen. Leonard Wood, commanding the Department of Santiago, a general court-martial was appointed to meet at San Luis, Cuba, and certain officers were detailed to compose the court, including among others, Lieut. Col. H. Y. Grubbs, 2d U. S. Vol. Inf.; that on November 11th, 1898, the court met at the place so appointed and proceeded to the trial of this petitioner upon the charge of conduct unbecoming an officer and a gentleman in violation of the 61st article of war; that the petitioner was then and there before said court arraigned upon said charge and the specifications thereof, and pleaded to both not

guilty; that thereupon the court proceeded with the trial of this petitioner and found and adjudged the petitioner of the charge and also of the specification aforesaid, not guilty, and did fully acquit him, and certified said finding and acquittal to said General Wood, and the court thereupon adjourned sine die; that several weeks thereafter, to wit, December 6th, 1898, without notice to this petitioner and without warrant of law,
3 the said court unlawfully caused to be added to said pretended record a statement that it did then revoke its former findings and did then find this petitioner guilty of said charge and did then sentence him to be dismissed from the service.

This petitioner is advised by counsel and believes that for the reasons hereinafter set forth and for other reasons the pretended sentence, and in fact all the proceedings aforesaid of the so-called court, are and ever were illegal and wholly void.

3. It is a fact, but was not known to this petitioner until on or about May 30th, 1902, that one of the officers so detailed to compose said court, and who served as a member and as president thereof and participated in all said proceedings thereof, by the name and title of Lieut. Col. H. Y. Grubbs, 2d U. S. Vol. Inf., was in fact at the time of said detail and throughout all said proceedings an officer of the Regular Army of the United States, holding as such a commission of 1st lieut. of infantry, and by reason of the 77th article of war incompetent to sit on said court-martial for the trial of this petitioner, who was not an officer of the Regular Army. This petitioner therefore charges that all of the proceedings of said pretended court in his case are and ever were illegal, null, and void.

4. If this petitioner is mistaken in his assertion that the said pretended court was without jurisdiction to try him as herein set forth, then and in that event the finding of not guilty and acquittal aforesaid were final and conclusive, and the pretended finding of guilty and sentence aforesaid are and ever were illegal, null, and void.

5. This petitioner is advised by counsel, and believes, that without reference to the question as to whether or not the finding of not guilty and acquittal was conclusive, the said alleged finding of guilty and sentence were unlawful, null, and void, because Gen. Wood's order of December 1st, 1898, returning the record of the court for reconsideration did not point out defects in the record, as required by par. 957
4 of the Army Regulations of 1895, then in force, and also because the said order does not state nor does it otherwise appear that the record of the court at that time exhibited error in preparation or seemingly erroneous conclusions, and also because said par. 957 does not purport nor should it be construed to authorize the reviewing authority to recommit the case to a court-martial for reconsideration of findings of not guilty, whereby defendant is fully acquitted of every offence charged against him after a trial on the merits.

6. This petitioner is also advised by counsel, and believes, that even if the said proceedings and sentence were lawful, which he denies, yet that the attempted dismissal of this petitioner from the service without the approval of the President of the United States of said sentence was in violation of the 106th article of war, and illegal, null, and void, because hostilities between the United States and Spain were suspended

on August 12th, 1898, prior to the date of the alleged offence, and the treaty of peace between the United States and Spain was signed December 10th, 1898, the ratification of which treaty was afterwards duly made and proclaimed by the President, and according to the true intent and meaning of said article 106, the attempt to carry said sentence into execution was during a time of peace.

7. This petitioner is unable to state the exact amounts due him by reason of the premises, but he is informed and believes and so avers, that the same are as follows, to wit, $5,750 for his pay as first lieutenant aforesaid ever since the 17th day of February, 1899, at the rate of $1,500 per annum, and also $375 for three months' extra pay as such first lieutenant under the act of Congress approved January 12th, 1899, chapter 46 (30 S. L., 784), and also $500 for mileage and traveling allowances for travel from San Luis, Cuba, by way of New York City, to the city of New Orleans, Louisiana, where he was mustered into said service, or else to the city of Houston, Texas, which was the place of his residence at the time of his said appointment; amounting in all to the sum of six thousand six hundred and twenty-five dollars ($6,625), which he now claims.

8. This petitioner has not assigned or transferred his said claim, or any part thereof, or any interest therein, but is justly entitled to the amount thereof from the United States, after allowing all just credits and set-offs, as he is informed and believes.

9. The petitioner is a citizen of the United States, and has at all times borne allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and he believes the facts as stated in this petition to be true.

He prays judgment against the United States of America by reason of the premises for the sum of six thousand six hundred and twenty-five dollars ($6,625), as aforesaid.

LEWIS E. BROWN.

LORENZO A. BAILEY,
DUDLEY & MICHENER,
Attorneys.

DISTRICT OF COLUMBIA, *ss:*

I, Lewis E. Brown, do solemnly swear that I have read the foregoing petition by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

LEWIS E. BROWN.

Subscribed and sworn to before me this 15th day of December, 1902.

[SEAL.]

IVAN HEIDEMAN,
Notary Public in and for said District.

6 II. *Traverse—Filed February 8, 1905.*

In the Court of Claims of the United States. Term, A. D. 1904–1905.

LEWIS E. BROWN
vs.
THE UNITED STATES. } No. 23129.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

III. This cause was argued February 8, 1905, by Mr. Lorenzo A. Bailey for the claimant and by Mr. F. W. Collins for the defendants, and submitted.

On the 20th day of March, 1905, the court filed its findings of fact, and judgment was entered for claimant in the sum of four hundred and four dollars and twelve cents. The court also filed the following opinion:

NOTT, Ch. J., delivered the opinion of the court.

This case comes into court with a record which is not creditable to the administration of military justice.

1. First, it appears that the claimant, a lieutenant of volunteers, was tried by a court-martial of five members (the minimum number), the president of which was an officer in the Regular Army, notwithstanding the seventy-seventh article of war, which provides that "officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces." Without this officer the court consisted of less than the minimum number, and there could, consequently, be no court and no conviction.

2. It also appears that the court found the officer not guilty of the charge and specification upon which he had been tried.

3. It also appears that the record of the court-martial proceeding was transmitted to the commanding officer who convened the court, and was by him indorsed: "Returned for reconsideration." Thereupon the court-martial immediately—that is to say, upon the same day—and with no additional evidence before it, found the officer guilty of the charge and specification, and sentenced him to be dismissed from the service. This sentence was approved and carried out.

4. It also appears that the record of the court-martial upon which the case was considered by the commanding general was attacked collaterally, it being shown *aliunde* the record that the testimony of a witness, who was summoned, sworn, and examined before the court as a witness for the accused, and whose testimony tended to prove the accused innocent of the charge and specification, was wholly omitted from the record.

7 5. It finally appears that the charge was "conduct unbecoming an officer and a gentleman," and the specification was that the accused "did gamble with enlisted men at camp near San Luis, Cuba, on or about the 11th day of October, 1898." "Conduct unbecoming an

officer and a gentleman" is a military offense not defined and not definable, but it involves necessarily the element of turpitude or dishonor. It ranks next on the roll of dishonor to cowardice. There is no latitude of discretion as to the punishment, which must always be, upon conviction, dismissal from the service. The specification, "did gamble with enlisted men" on one occasion, "the 11th day of October, 1898," is a mere conclusion of law and not a specification of facts. To pay 25 cents for a ticket in a raffle would be gambling; it might be conduct prejudicial to good order and military discipline, but it would be too absurd for argument to class it as "conduct unbecoming an officer and a gentleman," as involving turpitude or dishonor, or as rendering a man unfit to associate with honorable men and to continue to do duty in the Army.

The first objection raised to the conviction is that above set forth, that one of the members of the court-martial was an officer of the Regular Army, and that without him there was not a sufficient number of members present to constitute a court.

To this the defendant's counsel makes two replies: First, that the officer was asked if he had any objection to any member of the court, and he answered "no;" second, that that member of the court was at the time absent from the Regular Army on leave and serving as a lieutenant-colonel of volunteers.

As against the first of these replies the counsel for the claimant contends that the member of the court came into the court-martial in the guise of an officer of volunteers; that the fact of his being in the Regular Army was unknown to the officer on trial, and that the waiver of the officer of personal objection to all members of the court could not make a member competent who by statute is expressly declared "not competent."

As to the second ground taken by the defendant's counsel, viz, that the relations of the member of the court with the Regular Army were for the time being suspended, it may be conceded that, if the purpose of the statute was administrative, if the object was to save the more valuable time of Regular Army officers, if there were two systems of law applicable to the regular and volunteer forces, etc., the suspension of an officer's relations with the Regular Army might take the case out of the statute. But the purpose of the statute undoubtedly was to obviate a prejudice which existed in the minds of volunteers against Regular Army officers—a belief that such officers were prejudiced against volunteers, that they administered discipline and punishment with a severity that amounted to injustice. The language of the statute is too imperative to admit of evasion: "Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces." It admits of but one interpretation and of no exception. The president of the court was a lieutenant in the Regular Army. While he was temporarily doing duty as a lieutenant-colonel of the volunteer forces he was promoted in the Regular Army; and the fact that he was also doing duty as an officer in a volunteer regiment does not authorize the court to say that he was not an officer of Regular Army. The court is of the opinion that the competency of this member of the court could not be conferred by the waiver of personal objections, and that he was an officer of the Regular Army within the intent of the statute.

The other questions in the case have been argued with most praiseworthy care and elaboration. Some of them are of great importance, but in view of the fact that the proceedings were void ab initio, that there was in fact no court present competent to try the claimant for his alleged offense, it is inadvisable that this court proceed further with the case.

The claimant seeks to recover pay from the time he was dismissed under the sentence of the court-martial to the present time. He grounds this supposed right partly on the fact that he applied to the War Department for an honorable discharge, and that it was refused. But when he so applied he had been dismissed from the Army, and the ground of his dismissal appearing on the record of the Department as honorable or dishonorable would not affect his right to recover the pay of which he had been illegally deprived. It seems plain to the court that when the regiment, with all of its officers and men, was mustered out of the service the muster-out was the dissolution of the regiment and of every office in and connected with it. From that time there was no office for the claimant to hold and no salary to which he could be entitled. The recovery, therefore, must be limited to a recovery of the officer's pay from and including Feburary 18, 1899, up to the time of the final muster out of the regiment, May 25, 1899, both inclusive, amounting to $404.12.

8 IV. *Order—Filed March 12, 1906.*

On the 29th day of January, 1906, the case was reargued and resubmitted and on the 12th day of March, 1906, the court filed the following

ORDER:

It is ordered by the court that the claimant's motion for a new trial be allowed; that the judgment heretofore rendered be vacated and set aside and the findings of fact be withdrawn; and that new findings of fact and conclusions of law be this day filed, ordering judgment for claimant in the sum of $658.33.

The opinion to stand as rendered, except as to change of figures in amount of judgment.

BY THE COURT.

Filed March 12, 1906.

9 V. *Findings of fact and conclusion of law—Filed March 12, 1906.*

LEWIS E. BROWN
vs.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

Company I of the Ninth United States Volunteer Infantry was organized in the month of June, 1898, at Houston, Tex., whence it proceeded

to New Orleans, La., where it arrived July 2, 1898, and was there mustered into the service of the United States on July 3, 1898, and thereafter served in Cuba, beyond the limits of the United States.

The claimant, Lewis E. Brown, joined said company June 25, 1898, at Houston, Tex., where he then resided; was appointed, by the name of Louis E. Brown, first lieutenant of said company June 29, 1898; received and accepted July 11, 1898, at New Orleans, his commission, dated July 7, 1898, as such first lieutenant, and served as such with his company under said commission until February 17, 1899, within, and also in Cuba without, the limits of the United States.

II.

While said company was serving in Cuba, in the military department of Santiago, the following order was issued:

"Proceedings of a general court-martial which convened at San Luis, Cuba, pursuant to the following order:

"Special Orders, No. 70. } HEADQUARTERS DEPARTMENT OF SANTIAGO, *Santiago de Cuba, November 3d, 1898.*

[Extract.]

"4. A general court-martial is hereby appointed to meet at San Luis, Cuba, at ten o'clock a. m., Monday, Nov. 7th, 1898, or as soon thereafter as practicable, for the trial of such officers as may be properly brought before it.

"DETAIL FOR THE COURT.

"Colonel C. J. Crane, 9th U. S. V. I.
"Lt. Col. H. Y. Grubbs, 2d U. S. V. I.
"Major H. N. Swain, 2d U. S. V. I.
"Major G. W. Ford, 23d Kansas Vol. Inf.
"Capt. M. S. Swain, 2d U. S. V. I.
"Capt. F. J. Looney, 2d U. S. V. I.
"Capt. R. M. Nolen, 9th U. S. V. I.
"Capt. C. A. Winders, 9th U. S. V. I.
"Capt. J. L. Waller, 23d Kansas Vol. Inf.
"Capt. T. R. Van Pelt, 8th Ill. Vol. Inf.
"1st Lieut. Allen Sholars, 2d U. S. V. I., appointed judge-advocate.
"A greater number of officers can not be assembled without manifest injury to the service.
"Immediate example requiring it, the court will sit without regard to hours.
"The quartermaster's department will furnish the necessary transportation.
"By command of Brigadier-General Wood.

"JOHN H. BEACON,
"Lt. Col. & A. A. G., U. S. V., Adjutant-General."

10 At 2 o'clock p. m., November 11, 1898, the court met pursuant to said order, except that four members of the court were absent, viz, Colonel Crane, Major Swain, and Captains Looney and Nolen.

The said Brown was then brought before the court and said order was read to him, and he was asked if he objected to being tried by any member present named therein, to which he replied that he objected to Capt. C. A. Winders, Ninth United States Volunteer Infantry, on the ground that said Captain Winders was the officer preferring the charge and a witness; which objection was sustained by the court, and Captain Winders withdrew.

The said Brown was then asked if he objected to any other member present, to which he replied in the negative.

The remaining five members of the court, consisting of Lieutenant-Colonel Grubbs, Major Ford, and Captains Swain, Waller, and Van Pelt, and the judge-advocate, First Lieutenant Sholars, were then sworn, and before the court which was so organized the said Brown was thereupon arraigned and tried on the charge of "Conduct unbecoming an officer and a gentleman, in violation of the sixty-first article of war." The specification under this charge was: "In that the said First Lieutenant Louis E. Brown, Company I, 9th U. S. Vol. Inft., did gamble with enlisted men of Co. I, 9th U. S. V. Inft. This at camp near San Luis, Cuba, on or about the eleventh day of October, A. D. 1898." To the charge and specification the accused pleaded not guilty.

Witnesses were produced, sworn, and examined for the prosecution and for the accused, respectively, whereupon the case was submitted. The accused and the judge-advocate withdrew, the court was closed, and found the accused of the charge and of the specification not guilty, and acquitted him. The court then adjourned sine die, and the record was transmitted to General Wood, by whose order the court had been convened.

III.

December 6, 1898, the court reconvened at San Luis pursuant to the following indorsement upon the record:

"HEADQUARTERS DEPARTMENT OF SANTIAGO,
"*Santa, Dec. 1st, 1898.*

"Respectfully returned to G. C. M. convened at San Luis, S. O. 70, p. 4, these headquarters, for reconsideration.

"By command of Brig. Genl. Wood:

"JOHN H. BEACOM,
"*Lt. Col. Vol., A. A. G., Ad't Gen'l.*"

The said indorsement was then read to the court; whereupon the court revoked its former findings and found the accused of the specification and also of the charge guilty, and sentenced him to be dismissed the service; whereupon the court again adjourned sine die.

The accused was not present at said proceedings had on December 6, 1898, and had no notice or knowledge thereof.

December 24, 1898, General Wood approved the proceedings, findings, and sentence of the court as recorded, and forwarded such record to the War Department for the action of the President; but the same was, on January 12, 1899, returned to General Wood by the War Department, with the statement of the Judge-Advocate-General "that the one hundred and sixth article of war only relates to time of peace, and that the

state of war still continues;" whereupon the following order was made and indorsed on the record:

"HEADQUARTERS DEPARTMENT OF SANTIAGO,
"*Santiago de Cuba, Feb. 15th, 1899.*

"The sentence in the foregoing case of First Lieutenant Louis E. Brown, 9th United States Volunteer Infantry, will be executed to take effect on the seventeenth instant, on which date he will cease to be an officer of the Volunteer Army of the United States.

"LEONARD WOOD,
"*Major-General, U. S. V., Commanding.*"

IV.

May 7, 1900, the claimant duly applied for an honorable discharge as of May 25, 1899, and also for all pay, allowances, and other moneys due him to the date of such muster out, which applications were refused by the War Department.

V.

The claimant, as first lieutenant, has received pay at the rate of $1,500 per annum, as allowed by law during all the period commencing July 2, 1898, and ending February 17, 1899, excepting only the sum of $10 withheld from his pay for the month of October, 1898, and has received no other pay or allowances.

11 Claimant has not received the two months' extra pay provided for by the act of January 12, 1899.

VI.

Lieut. Col. H. Y. Grubbs, who served as president of said court-martial, was a cadet at the United States Military Academy from June 18, 1892, to June 12, 1896, when he was appointed second lieutenant, Eighteenth Infantry. An indefinite leave of absence from the Regular Army was granted him May 20, 1898, to enable him to accept a commission as lieutenant-colonel, Second United States Volunteer Infantry, and he was commissioned as such July 1, 1898, to rank from June 25, 1898, and accepted the commission July 8, 1898. He was mustered out and honorably discharged from the volunteer service as lieutenant-colonel, Second United States Volunteers, June 22, 1899. While on duty in the volunteer service he was promoted to be first lieutenant in the regular service September 16, 1898, and was assigned to the Sixth Infantry January 1, 1899.

The fact that Lieutenant-Colonel Grubbs was, at the time of the trial, a Regular Army officer was unknown to the claimant until May, 1902.

VII.

Ever since February 17, 1899, the claimant has been able, willing, and ready to perform the duties of his rank as first lieutenant.

Company I, of the Ninth United States Volunteer Infantry, and all the officers, noncommissioned officers, and enlisted men were mustered out May 25, 1899.

VIII.

The following indorsement appeared upon the back of the order of the commanding officer reconvening the court-martial, and was the first indorsement thereon:

"HEADQUARTERS DEPARTMENT OF SANTIAGO,
"OFFICE OF JUDGE-ADVOCATE,
"*December 1, 1898.*

"Respectfully returned to the adjutant-general of the department.

"The evidence in this case is conclusive as to the guilt of the accused. Four witnesses testify that they saw him gambling with enlisted men, while two witnesses, whose memories are faulty, testify negatively. The accused denies the allegation. It is recommended that the proceedings be returned to the court for reconsideration of its finding.

"H. R. BAILEY,
"*Captain, Fifth Infantry, Acting Judge Advocate.*"

It does not affirmatively appear that this indorsement was read to the court-martial.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover of and from the United States judgment for pay from Feb. 18 to May 25, 1899, both inclusive, amounting to four hundred and eight dollars and thirty-three cents ($408.33), and for two months' extra pay, amounting to two hundred and fifty dollars ($250), making a total sum of six hundred and fifty-eight dollars and thirty-three cents ($658.33).

BY THE COURT.

12 VI. *Final judgment of the court.*

LEWIS E. BROWN
vs.
THE UNITED STATES. } No. 23129.

At a Court of Claims held in the city of Washington on the 11th day of March, 1906, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Lewis E. Brown, do have and recover of and from the United States the sum of six hundred and fifty-eight dollars and thirty-three cents.

$658\frac{33}{100}$.

BY THE COURT.

13 VII. *Application of the defendants for an allowance of appeal.*

LEWIS E. BROWN
vs.
THE UNITED STATES. } No. 23129.

From the judgment rendered in the above-entitled cause on the 12th day of March, 1906, in favor of the claimant, the defendants, by their

Attorney-General, on the 23d day of April, 1906, make application for and give notice of an appeal to the Supreme Court of the United States.

J. A. VAN ORSDEL,
Asst. Attorney-General.

Filed April 23, 1906.

Ordered, that this appeal be allowed as prayed for.

BY THE COURT.

April 23, 1906.

14 VIII. *Application of the claimant for and allowance of appeal.*

LEWIS E. BROWN
v.
THE UNITED STATES. } No. 23129.

From the judgment rendered in the above-entitled cause on the 12th day of March, 1906, the claimant, by his attorneys, on the 23d day of April, 1906, makes application for and gives notice of an appeal to the Supreme Court of the United States.

LORENZO A. BAILEY,
DUDLEY and MICHENER,
Attorneys for claimant

Filed April 23, 1906.

Ordered that this appeal be allowed as prayed for.

BY THE COURT.

April 23, 1906.

15 Court of Claims.

LEWIS E. BROWN
vs.
THE UNITED STATES. } No. 23129.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the opinion of the court, of the order of the court, of the findings of fact and conclusion of law, of the final judgment of the court, of the application of the defendants and of the claimant, respectively, for the allowance of appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 30th day of April, 1906.

[SEAL.]

JOHN RANDODPH,
Asst. Clerk Court of Claims.

16 (Indorsement on cover:) File No. 20240. Court of Claims. Term No. 283. The United States, appellant, vs. Lewis E. Brown. File No. 20241. Term No. 284. Lewis E. Brown, appellant, vs. The United States. Filed May 3d, 1906. File No. 20240 and 20241. Supreme Court U. S., office of the clerk. Received May 1, 1906.

O